

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
County of Calvert, Maryland)	WT Docket No. 02-55
and Sprint Nextel Corporation)	
)	
Mediation No. TAM-12002)	

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2007

Released: September 10, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address a case referred to us for *de novo* review from Wave 1, Phase 2 mediation by the 800 MHz Transition Administrator (TA) involving a dispute between Calvert County, Maryland (County) and Sprint-Nextel Corporation, Inc. (Sprint).¹ This case concerns the reconfiguration of the County's 800 MHz communications system. The dispute relates to certain estimated planning-related costs for the County and its consultant, RCC Consultants (RCC). The County seeks a total of approximately \$223,000 in planning funds, of which \$73,706.52 is in dispute. Based on our *de novo* review of the mediation record, we find that the County is entitled to compensation from Sprint for the majority of its claimed internal planning costs and RCC's proposed planning-related consultant services as well as all of its claimed negotiation and mediation support expenditures.

II. BACKGROUND

2. Calvert currently utilizes two distinct 800 MHz NPSPAC radio communications systems for daily operations.² The County utilizes a 5-channel, 5-site analog trunked simulcast network under call sign WPFN680.³ Calvert also utilizes a 2-site, 2-channel conventional simulcast system for NPSPAC mutual aid purposes under call sign WQDL650.⁴ Calvert supports over 800 internal radios and has exchanged programming information with more than 2,100 interoperability partners in Southern and Central Maryland.⁵ Throughout the rebanding planning and implementation process, Calvert intends to work closely with neighboring entities (Anne Arundel County, Charles County, Prince George's County, St. Mary's County; the Maryland State Police and a BG&E nuclear facility at Calvert Cliffs, Maryland) to preserve interoperability relationships.⁶

3. The *800 MHz Report and Order* and subsequent orders in this docket require Sprint to

¹ Recommended Resolution, TAM-12002 at 1 (filed February 26, 2006) (RR).

² Proposed Resolution Memorandum of Calvert County, Maryland, TAM 12002 App. at Exhibit D (Oct. 2, 2006) (Calvert PRM).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

negotiate a Frequency Relocation Agreement (FRA) with each 800 MHz licensee that is subject to rebanding.⁷ To ensure meaningful FRA negotiations, licensees may seek initial funding for planning activities by negotiating a Planning Funding Agreement (PFA). On February 1, 2006, negotiations between Sprint and Wave 1, Phase 2 licensees commenced PFA negotiations regarding planning for retuning of the system.⁸ This case was referred to mediation as part of Wave 1 Stage 2 on July 27, 2006.⁹ During mediation, the County and Sprint agreed on all PFA issues except for certain estimated planning-related costs for the County and RCC.¹⁰ On February 26, 2007, after mediation proved unsuccessful on these issues, the mediator referred the matter to PSHSB for *de novo* review and resolution, submitting the record in the case as well as a Recommended Resolution (RR).¹¹ On March 12, 2007, the County submitted its statement of position, as did Sprint.¹²

4. The County seeks a total of approximately \$223,000 in planning funds, of which approximately \$73,706.52 is in dispute.¹³ We note that in the PFAs that have been approved to date, the TA reports that the median planning funding amount requested by licensees for a system of Calvert County's size (501-1000 mobile and portable units) is \$57,154 and the 75th percentile amount of these planning funding requests is \$80,026.¹⁴ Thus, Calvert County's request is nearly four times more than the median amount of funding and nearly three times as much as the 75th percentile compared to licensees of similarly-sized systems. This large deviation warrants careful scrutiny of these disputed costs.

III. DISCUSSION

A. Standard of Review

5. As an initial matter, the Commission's orders in this docket assign to the County the burden of proving that the funding it has requested is reasonable, prudent, and the "minimum necessary to provide facilities comparable to those presently in use."¹⁵ We note that the Commission has recently clarified this standard for purposes of determining whether licensee relocation costs are the "minimum necessary" to accomplish rebanding, and therefore must be paid by Sprint.¹⁶ In the *Rebanding Cost Clarification Order*, the Commission stated that the term "minimum necessary" cost does not mean the

⁷ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) (*800 MHz Report and Order*); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*); and Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) (*800 MHz MO&O*).

⁸ RR at 2.

⁹ *Id.*

¹⁰ The parties also disputed whether some of the County's internal and outside legal costs involved in the negotiation of the FRA should be included in the cost estimate of the PFA. *Id.* at 12. This issue is no longer in dispute and we need not address it further. *Id.* at 23; Sprint SOP at 12 n. 24.

¹¹ RR at 24.

¹² Statement of Position of Calvert County (Mar. 12, 2007) TAM 12002 (County SOP); Statement of Position of Sprint Communications, Inc., TAM 12002 Mar. 12, 2007) (Sprint SOP).

¹³ Sprint understood Calvert County's estimate to be \$222,468.87. See Proposed Resolution Memorandum of Sprint Nextel, Corp., TAM 12003 at 3 (filed Oct. 2, 2006) (Sprint PRM).

¹⁴ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf at 1.

¹⁵ *800 MHz Report and Order*, 19 FCC Rcd at 15074 ¶ 198.

¹⁶ Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

absolute lowest cost under any circumstances, but the “minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner.”¹⁷ This standard takes into account not just cost but all of the objectives of the proceeding, including timely and efficient completion of the rebanding process, minimizing the burden rebanding imposes on public safety licensees, and facilitating a seamless transition that preserves public safety’s ability to operate during the transition.¹⁸

6. Our review of costs is also influenced by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the planning process. In this regard, we have the benefit of data from the TA that can provide us with cost metrics for approved planning funding agreements for systems of varying size and complexity.¹⁹ We stress that these metrics are only one guiding factor underlying our analysis of the reasonableness of planning costs. Depending on the facts the licensee has established in the record, we may disapprove costs that fall below the guidelines or, conversely, approve costs that exceed the guidelines. We now turn to the specific costs that are in dispute.

B. RCC Consultant Costs

7. The County seeks \$72,430 for 376 hours of work by RCC on a variety of planning tasks and RCC expenses. We approve most of the County’s request, with certain adjustments discussed below.

8. *County Position.* The County proposes to use a “tripartite” project management structure in which County personnel, RCC, and Motorola, Inc., the County’s primary vendor, will collaborate on planning tasks, with the County assuming a “supervisory” role in most activities. The County states that it used the same approach working with RCC and Motorola when it originally constructed its 800 MHz communications system. Within this tripartite structure, the County’s request for 376 hours of planning work by RCC breaks down as follows:

- Equipment Suitability and Frequency Analysis Review – \$3,220 for 18 hours of RCC’s effort to the equipment suitability and frequency analysis review.²⁰
- Infrastructure Inventory – \$7,100 for 44 hours of work by RCC to assist in the inventory of the County’s fixed sites and \$580 in expenses.²¹
- Subscriber Unit Inventory – \$10,320 for 64 hours of work by RCC to assist in the inventory of the County’s radios and \$780 in RCC expenses.²²
- Reconfiguration Plan Design and Retune/Reprogram/Replace Determination – \$22,480 for 132 hours of work by RCC to assist in the design of the reconfiguration plan and the determination of whether equipment should be retuned, reprogrammed, or replaced; and \$580 in RCC expenses.²³
- Frequency Analysis – \$1,600 for 10 hours of work by RCC to complete a frequency analysis.²⁴
- Project Management – \$23,780 for 108 hours of work by RCC for project management and \$1,990 in expenses.²⁵

¹⁷ *Id.* at 9820 ¶ 6.

¹⁸ *Id.* at ¶ 8.

¹⁹ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf.

²⁰ Sprint PRM, App. 11 at 3.

²¹ *Id.* App. 11 at 7.

²² *Id.*

²³ *Id.*, App. 11 at 25.

²⁴ *Id.*, App. 11 at 3.

²⁵ *Id.*, App. 11 at 32.

9. *Sprint Position.* Sprint proposes to reduce these RCC hours from 376 to 141 hours. Sprint does not dispute that each of the tasks listed above is needed for planning, but Sprint argues that the County's proposal will lead to inefficiency and duplication in the work performed by the County, Motorola, and RCC.²⁶ With respect to most of the tasks, Sprint argues that Motorola should assume a leadership role and that RCC should have a much more limited role than the County has proposed.²⁷

10. *Mediator Recommendation.* The mediator agreed with the County that the County is entitled to determine how work will be apportioned among its own staff, Motorola, and RCC, provided that it avoids duplication of effort. The mediator found some indication of duplication in the County's planning proposal, but found it difficult to distinguish between duplicative activities and activities involving review and verification of the work of others.²⁸ Accordingly, the mediator attempted to pro-rate the request based on what he regarded as each party's overall level of contribution to the project. Based on this approach, the mediator recommended compensating RCC for 205 of the 376 hours requested for combined work on the above-listed tasks.²⁹

11. *Decision.* We approve the County's request in full with respect to equipment suitability and frequency analysis review, infrastructure inventory, subscriber inventory and frequency analysis. We approve the County's request in part with respect to the remaining listed tasks. The County is entitled to retain RCC as a separate consultant to assist it in planning activity, rather than relying exclusively on its vendor.³⁰ In addition, the County is entitled to decide how tasks will be apportioned between internal staff, RCC, and Motorola, provided that it reasonably avoids duplication of effort. With respect to some of the disputed tasks, we find that standard to be met here. With respect to other disputed tasks, we find sufficient evidence of duplication that a reduction of the amount requested is warranted.

12. Equipment Suitability and Frequency Analysis Review. We conclude that the County has provided sufficient justification for the 18 hours in dispute. Sprint disputed Calvert's estimated cost for RCC to assess the suitability of the fixed equipment for reconfiguration and to assist Motorola in conducting the frequency analysis and subsequently reviewing the results of that analysis.³¹ Sprint offered approximately \$2,504.46 for 14 hours of RCC's effort.³² The mediator found RCC's review of Motorola's equipment and intermodulation studies duplicative and thus endorsed Sprint's offer.³³ We approve the County request in full. First, such review appears necessary given that RCC will work with ancillary equipment outside Motorola's contractual obligations and will make recommendations to the County to accept or modify the Motorola determinations in order to meet comparable facility requirements and avoid undue disruptions.³⁴ Second, the difference between the amount sought by the County and the amount offered by Sprint for this task is approximately \$715. Pursuant to the *Rebanding Cost Clarification Order*, we believe it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation.³⁵

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ RR at 4.

²⁹ *Id.* at 23-24.

³⁰ City of Naperville, Illinois, WT Docket No. 02-55, *Memorandum Opinion and Order*, DA 07-2615 at ¶ 12 (PSHSB rel. June 14, 2007).

³¹ Sprint PRM at 10.

³² *Id.*; RR at 14.

³³ RR at 14.

³⁴ Calvert SOP at 4-5.

³⁵ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9820-21 ¶ 9.

13. Infrastructure Inventory. We conclude that the County has provided sufficient justification for the estimated 44 hours of work it requests for RCC's effort. The County request provides for RCC personnel to accompany Motorola during the inventory of the County's fixed sites and to identify any fixed equipment that must be reconfigured that is outside the scope of Motorola's contractual obligations.³⁶ The County contends that 44 hours should be budgeted for RCC to perform this task, while Sprint proposes 12 hours (and \$290 in RCC expenses) on the grounds that Motorola, which is separately budgeted for 25 hours, should be primarily responsible for this work.³⁷ We approve the County request in full. While 44 hours of RCC effort appears high relative to the Motorola effort, accurately inventorying the County's infrastructure is critical to ensuring a smooth and timely transition. We believe that the County has made a reasonable showing that RCC needs to participate directly in the inventory rather than merely reviewing Motorola's work.³⁸ In addition, RCC will be performing inventory tasks that are outside the scope of Motorola's contractual obligations.³⁹ For this purpose, it is reasonable to budget sufficient time for RCC to visit the system's fixed sites, and to review portions of the County system that will not be assessed by Motorola.

14. Subscriber Unit Inventory. We conclude that the County has provided sufficient justification for the 64 hours estimated for RCC's effort. The County requests \$10,320 for 64 hours of RCC time and \$780 in RCC expenses to inventory the system's 810 mobile and portable units.⁴⁰ Sprint contends that RCC's time should be reduced to 24 hours, resulting in a cost of \$3,870 for RCC's effort and \$390 in RCC expenses.⁴¹ The mediator approved 24 hours for this task, citing apparent duplication of effort.⁴² We approve the County's full request. RCC's effort goes beyond mere assistance and review and extends to actively collaborating with the County in managing the inventory process, which is rendered more complex by the variety of radios and agencies involved. In addition, the difference between the amount sought by the County and the amount offered by Sprint for this task is approximately \$6,450. The Commission has made clear in the *Rebanding Cost Clarification Order* that under such circumstances, it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation.⁴³

15. Reconfiguration Plan Design and Retune/Reprogram/Replace Determination. We conclude that the County has not provided sufficient justification for the 132 hours estimated for RCC's effort. The County requests \$22,480 for 132 hours of work by RCC to assist in the design of the reconfiguration plan and the determination of whether equipment should be retuned, reprogrammed, or replaced.⁴⁴ Sprint objects to these requests as duplicative of work that will be performed by Motorola,

³⁶ Sprint PRM App. 11 at 4-5.

³⁷ *Id.* at 10.

³⁸ RCC will review fleet maps, templates, and/or talk-group configuration of the system and will work with the County and Motorola to determine whether this information is up-to-date and correct, and this information will be used to avoid operational disruption during rebanding. Sprint PRM, App. 11 at 5.

³⁹ The RCC Statement of Work states that "[a] careful review of system documentation is required to allow identification of risks in the rebanding process and to construct a cutover plan and process that takes into account the configuration of the system infrastructure prior to rebanding." *Id.*, App. 11 at 4. RCC will collect and review the "as-built" documentation of the County radio systems. *Id.* RCC will also inventory sub-systems and ancillary systems that are not to be assessed by Motorola such as Bi-directional amplifiers, in-building coverage solutions, vehicular repeater systems and other special items." *Id.*, App. 11 at 4-5.

⁴⁰ Sprint PRM App. 11 at 7.

⁴¹ *Id.* App. 10 at 1; RR at 9.

⁴² RR at 16.

⁴³ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9820-21 ¶ 9.

⁴⁴ Sprint PRM App. 11 at 25.

which is budgeted to spend 110 hours (\$19,250) for reconfiguration plan design and 8.75 hours (\$1,531) on the retune/reprogram/replace (RRR) determination.⁴⁵ Sprint offered 56 hours for RCC's work on these tasks.⁴⁶ The County responds that the plan design work performed by RCC is not duplicative of Motorola's work, because the plan designed by RCC will integrate equipment and requirements that Motorola might overlook due to inadvertence or unfamiliarity, or simply because the equipment at issue was not installed by Motorola.⁴⁷ The County also contends that its proposed "collaborative" approach to planning will enable RCC to act as a "backstop" to Motorola and to cover areas not necessarily reflected in the Motorola contract.⁴⁸

16. We are not persuaded by the County's claim that its proposed approach avoids duplication. We do not question the County's right to employ both Motorola and RCC in the plan design process, but the County has not made clear why RCC should be budgeted for nearly as many hours of plan design as Motorola if its purpose is to be a "backstop" to Motorola. Moreover, while it may be reasonable for RCC to develop elements of the reconfiguration plan that do not involve Motorola equipment, we are not persuaded that both RCC and Motorola need to be heavily involved in elements of planning that clearly pertain to the Motorola elements of the system, such as the determination whether radios should be retuned, reprogrammed, or replaced. In fact, Motorola has developed standardized "RRR" recommendations for each of its radio models, which reduces the need for detailed analysis at the individual licensee level. Based on these factors, and consistent with our analysis in the *Charles County Order*,⁴⁹ we conclude that the County's request contains duplication in the apportionment of work between RCC and Motorola. Accordingly, we reduce RCC's hours to 56 for this task.

17. Frequency Analysis. We conclude that the County has provided sufficient justification for the 10 hours requested for RCC's effort. RCC proposes to spend 10 hours to collect copies of the County's radio frequency licenses and to collect information on other occupants of fixed antenna sites used by the County.⁵⁰ Based on its experience, Sprint offered five hours, which the mediator endorsed.⁵¹ We approve the County's request. First RCC will be solely responsible for this task and therefore it is appropriate to budget sufficient time for RCC to complete this task. Second, the difference between the amount sought by the County and the amount offered by Sprint for this task is approximately \$800. While RCC could arguably accomplish this task in less time, we believe it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation over an otherwise *de minimis* cost estimate.

18. Project Management. We conclude that the County has not provided sufficient justification for the 108 hours requested for RCC's effort. The County project management estimate includes 108 hours for project management activities by RCC during the planning phase, as well as 87 hours for Motorola.⁵² Sprint offers to fund all of Motorola's proposed hours, but 30 hours for RCC and

⁴⁵ *Id.*

⁴⁶ Sprint PRM at 12. The County also requests \$2,720 for 16 hours of work by RCC to assist in interoperability planning, which Sprint does not appear to challenge. *Id.* App. 11 at 25. In the absence of any disputed issue, we consider this request to be approved.

⁴⁷ County SOP at 4.

⁴⁸ *Id.*

⁴⁹ See County of Charles, WT Docket 02-55, *Memorandum Opinion and Order*, DA 07-3881 (rel. PSHSB September 10, 2007) (*Charles County Order*). In the *Charles County Order*, we ruled that the County failed to meet its burden relative to RCC's costs for this same task and in analyzing those proposed costs we relied on similar factors.

⁵⁰ Sprint PRM, App. 11 at 3.

⁵¹ RR at 13.

⁵² Sprint PRM App. 10 at 1; RR at 11.

half of RCC's associated expenses.⁵³ Sprint argues that Motorola's SOW states that Motorola will assign a Project Manager that will oversee the project plan for the rebanding effort to ensure a smooth execution of deliverables and that the County's requirements are met.⁵⁴ Even if RCC is to collaborate with Motorola, Sprint argues that RCC's effort should not significantly exceed Motorola's effort.⁵⁵ We agree to the extent discussed here. As stated above and in the companion *Charles County Order*, the County is entitled to employ a tripartite project management structure.⁵⁶ In that connection, we are prepared to afford the County some flexibility with respect to budgeting for project management, provided the hours proposed are reasonable in proportion to the overall amount of planning hours proposed for the project. In this case, Sprint and the County have agreed to 87 hours of work by Motorola. We find the 108-hour figure for RCC's contribution to be excessive in proportion to the amount of hours for Motorola's effort, which appears to encompass a broader set of responsibilities than RCC.⁵⁷ Therefore, we will approve 62 hours for RCC's participation in this task, as recommended by the mediator.⁵⁸ The County may also reapportion the total program management time between RCC and Motorola.

C. County Costs

19. The County requests a total of \$42,143.70 for 915 hours of work by internal staff on several disputed planning tasks, including expenses. We approve the County's request in full as discussed below.

20. *County Position.* The County's request for 915 hours of planning work by internal staff breaks down as follows:

- Reconfiguration Plan Design and Retune/Reprogram/Replace Determination – \$14,310 for 380 hours of work to assist in the reconfiguration design and RRR determination as well as \$6,150 in County expenses.⁵⁹
- Interoperability Planning -- \$11,330 for 290 hours of work on regional interoperability planning and other coordination.⁶⁰
- Project Management – \$10,353.70 for 245 hours of project management work by County internal staff.⁶¹

The County argues that its proposed allocation of internal staff time will further its "collaborative" approach with RCC and Motorola, which the County has applied successfully in the past.⁶²

21. *Sprint Position.* Sprint argues that the high number of hours requested by the County for these tasks appears duplicative.⁶³ Sprint further argues that Motorola should assume a leadership role in

⁵³ Sprint PRM at 14; RR at 12.

⁵⁴ Sprint PRM at 13.

⁵⁵ *Id.* at 14.

⁵⁶ See ¶ 11 *supra*. See *Charles County Order*, DA 07-3881 ¶ 11.

⁵⁷ Sprint PRM App. 9 at 9; App. 11 at 28-29.

⁵⁸ RR at 23.

⁵⁹ Sprint PRM App. 11 at 25.

⁶⁰ *Id.*

⁶¹ *Id.* App. 10 at 1; App. 11 at 29-30.

⁶² Calvert PRM at 5-6.

⁶³ Sprint PRM at 12.

these tasks with the County, and RCC assuming a less time-intensive supporting or supervisory role.⁶⁴

22. *Mediator Recommendation.* The mediator recommended that the Commission find that the County is entitled to 490 hours for plan design, RRR determination, and interoperability planning, and 262 hours for project management.⁶⁵ The mediator found that the County's proposal included a high number of hours devoted to coordination meetings attended by multiple County personnel. The mediator found this element of the County's request to be disproportionate relative to the total planning effort and that many of these meetings appeared to be duplicative.

23. *Decision.* As discussed in more detail below, we approve the County's requests for reconfiguration plan design, RRR determination, and interoperability planning, and program management. In assessing the record, we give reasonable deference to a public safety licensee's decisions concerning internal staffing.⁶⁶ Public safety licensees—particularly in smaller jurisdictions such as the County—typically have limited internal resources to address the multiple demands on their time imposed by the rebanding process. However, licensees must still demonstrate that their overall internal planning costs are reasonably related to the administrative burdens that are imposed by the planning process.

24. Reconfiguration Plan Design and Retune/Reprogram/Replace Determination. We conclude that the County has provided sufficient justification for the 380 hours requested for internal staff. The County requests \$14,310 for internal staff work on these tasks. Although the requested number of hours (380) is high, we approve the request based on several factors. First, the planning process must take into account that rebanding the County's system is relatively complex from a technical perspective because it is a simulcast system.⁶⁷ Thus, the reconfiguration plan must provide for the County's technicians to work in a synchronized fashion to reconfigure each channel and minimize disruption.⁶⁸ The plan design must also take into account the age of the system and the reconfiguration process chosen, and significant modifications and design changes may need to be integrated into the plan to effect the necessary reconfiguration.⁶⁹

25. Second, planning for rebanding of the County's system is complex from an administrative perspective. As noted above, the County system supports daily operations of numerous County agencies on the system and has exchanged programming information with more than 2,100 interoperability partners.⁷⁰ The County argues that the limited number of channels increases the complexity of rebanding because the interruption of a single channel is a significant loss of system capacity.⁷¹ As we stated in our *Charles County Order*, the County "must take these factors into account in the planning process to ensure that all of the user agencies' needs are accounted for during the

⁶⁴ *Id.* at 14.

⁶⁵ RR at 21, 23. The mediator's recommendation for project management was 17 hours more than the County requested because the mediator calculated project management as a percentage of the County's total non-project management costs. *Id.* at 22-23.

⁶⁶ See State of Maryland, WT Docket No. 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 10979, 10985 ¶ 18 (PSHSB 2007); City of Manassas, Virginia, WT Docket No. 02-55, *Memorandum Opinion and Order*, 22 FCC Rcd 8526, 8530 ¶ 14 (PSHSB 2007).

⁶⁷ As a general matter simulcast systems are more difficult to reconfigure than non-simulcast systems, because the radio signal must be fine-tuned for amplitude and phasing characteristics at each site to ensure that audio quality is intelligible and useable in areas with overlap. Sprint PRM at App. 2 at 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See ¶ 2, *supra*.

⁷¹ Calvert PRM at 2.

transition.”⁷²

26. Interoperability Planning. We conclude that the County has provided sufficient justification for the 290 hours requested for interoperability planning. The County requests \$11,330 for 290 hours of work on regional interoperability planning and other coordination.⁷³ Though Sprint originally supported all of the County’s proposed costs for interoperability concerns, Sprint objects to what it contends is an unexplained increase of 160 hours for internal staff time.⁷⁴ The County contends that it has not increased its request for interoperability hours, and that Sprint is reacting to a formatting change in the presentation of its estimate.⁷⁵ We approve this request based on the importance of interoperability planning to successful rebanding of this system. The County intends to meet regularly with stakeholders from its interoperability partners to synchronize and coordinate rebanding activities to the greatest extent possible, so as not to create interoperability vulnerabilities.⁷⁶ As we said in the *Charles County Order*, it is “important that the County coordinate closely with its interoperability partners in order to ensure a seamless transition.”⁷⁷ We regard this expense as reasonably related to the administrative burden imposed on the County by the rebanding process, and therefore give deference to the County on this issue.

27. Project Management. We conclude that the County has provided sufficient justification for the 245 hours requested for project management. The County requests \$10,353.70 for 245 hours of work by County internal staff on project management.⁷⁸ The time requested consists primarily of County staff participation in (1) weekly project management meetings with RCC and Motorola (138 hours) and (2) internal meetings with “County stakeholders and elected officials” (107 hours).⁷⁹ We approve the County’s request in full. We agree with the County that participation in weekly project management meetings is reasonably necessary to “discuss project scheduling, project administration, cost controls, resource allocations, status reports, risk management activities, and overall project progress.”⁸⁰ The County’s core rebanding team will participate in these meetings and collectively represent all emergency service agencies, including law enforcement and fire/EMS/rescue.⁸¹ We believe that this element of the County’s project management request is reasonable to ensure that the County’s interests are accurately, efficiently, and effectively represented in these meetings. Accordingly, we approve 138 hours (approximately \$5,830) for this portion of the County’s request.

28. With regard to the latter category of the County’s project management cost estimate, the County estimates that a considerable amount of time will be “necessary to properly organize, educate, inform, solicit input from, and direct County stakeholders and elected officials” throughout the estimated reconfiguration planning phase.⁸² We believe that educating County stakeholders and elected officials as to the importance of expeditiously completing this project is reasonably related to the administrative burdens imposed by 800 MHz rebanding. In that regard, we believe it is appropriate to budget a limited

⁷² *Charles County Order*, DA 07-3881 ¶ 24.

⁷³ Sprint PRM App. 11 at 25.

⁷⁴ *Id.* at 14-15.

⁷⁵ Calvert PRM at 13.

⁷⁶ *Id.* at Exhibit D.

⁷⁷ *Charles County Order*, DA 07-3881 ¶ 25.

⁷⁸ Sprint PRM, App. 10 at 1; RR at 11.

⁷⁹ Sprint PRM, App. 11 at 29-30.

⁸⁰ *Id.*, App. 11 at 29.

⁸¹ *Id.*, App. 11 at 29-30.

⁸² *Id.*, App. 11 at 30.

amount of time for the County to perform this task. Furthermore, we regard the County's proposed cost for this expense (approximately \$4,520) as *de minimis*. Under the *Rebanding Cost Clarification Order*, it is appropriate for Sprint to pay such costs rather than to spend more substantial resources on prolonged mediation over an otherwise *de minimis* cost estimate. Therefore, we approve this portion of the County's cost estimate.

D. Negotiation and Mediation Costs

29. *County Position.* The County seeks \$19,618.44 for time spent by Motorola, RCC and the County's internal staff on negotiation and mediation support, including 19 hours for the County's internal staff, 80.75 hours for RCC, and 18 hours for Motorola.⁸³

30. *Sprint Position.* Sprint contends that County staff should be credited for 10,934.30.⁸⁴ Sprint states that during the mediation, it sought to present data showing that the County's funding request was disproportionately higher than funding requests in other cases on a cost-per-unit basis.⁸⁵ Sprint contends that the County showed "recalcitrance" in response to this line of argument advanced by Sprint, resulting in a substantial increase in mediation time and associated costs.⁸⁶

31. *Mediator Recommendation.* The mediator found that the County's expenditures for negotiation and mediation support were reasonable.⁸⁷ The mediator stated that the mediation process, while difficult, involved good faith efforts by all parties involved.⁸⁸

32. *Decision.* Based on the record, we believe the County's request for negotiation and mediation support is reasonable. We reject Sprint's argument that the protracted nature of mediation in this case was solely or primarily caused by the County. The record shows that Sprint's conduct was also a factor. For example, in response to County requests for information about cases that Sprint claimed were comparable, Sprint invoked confidentiality restrictions in its agreements with other licensees,⁸⁹ which delayed its responding to the County until the necessary approvals could be obtained.⁹⁰ Sprint has also conceded that prior to the issuance of the *Rebanding Cost Clarification Order*, its practice in negotiation was to routinely "challenge virtually every dollar spent on band reconfiguration to assure compliance with 'minimum cost.'"⁹¹ Given that Sprint's conduct was at least as much a factor as the County's in prolonging mediation, we find no basis to reduce the amount requested by the County for this cost category.

IV. ORDERING CLAUSES

33. Accordingly, pursuant to the authority of Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 90.677, of the Commission's Rules, 47 C.F.R. § 90.677, IT IS ORDERED that the

⁸³ RR at 12.

⁸⁴ *Id.* Sprint does not propose to reduce Motorola's hours.

⁸⁵ Sprint PRM at 7.

⁸⁶ Sprint SOP at 9.

⁸⁷ RR at 23.

⁸⁸ *Id.*

⁸⁹ Such disputes over confidentiality led us to issue an order permitting public safety licensees to disclose the terms of PFAs and FRAs negotiated with Sprint. *See Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Order*, 22 FCC Rcd 172 (PSHSB 2007).

⁹⁰ County PRM at 3-4, 10 n. 21 and accompanying text.

⁹¹ *Rebanding Cost Clarification Order*, 22 FCC Rcd at 9819 ¶ 3.

issues submitted by the Transition Administrator are resolved as discussed above.

34. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties within seven days of the date of this Order for the purpose of negotiating a Planning Funding Agreement consistent with the resolution of issues set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Associate Bureau Chief
Public Safety and Homeland Security Bureau